IN THE HIGH COURT OF DELHI

RSA No.267/2007

Ravinder Kumar Gupta ..... Appellant
! through: Ms.Sunita Harish, Advocate

VERSUS

$ M/s. Indain Sulphacid Industries Ltd. &
M/s. Sun Aluminium Corporation ..... Respondent
^ through: Mr.Pawan Kumar Aggarwal, Advocate

% DATE OF DECISION: 13.12.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.** (Oral)
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1. At the outset I may note that the instant appeal numbered as a Regular Second Appeal ought to have been numbered as an Executing Second Appeal for the reason it lays a challenge to an order passed by the learned Appellate Judge upholding an order passed by the Executing Court dismissing objections filed by the appellant herein.

2. Order 21 of the Code of Civil Procedure is a complete code dealing with execution of decrees and pertaining to a decree

for possession of immovable property, an order disposing of objections to execution of the decree is appealable as a decree in terms of Order 21 Rule 103. Just as an original decree is subject to a first appeal and thereafter a regular second appeal, order passed by an executing court pertaining to delivery of possession of immovable property would be subject to Execution First Appeal and thereafter Execution Second Appeal.

3. Whether at all a question of law arises for consideration in the instant case?

4. Having gone through the record of the case I hold that no question of law arises and hence the instant appeal is being dismissed at the after notice stage itself.

5. Relevant facts are that property bearing municipal No.458-466, Gali No.8, Friends Colony, G.T. Road, Shahdara, Delhi-32 admittedly belonged to M/s.Indian Sulphacid Industries Ltd.

6. Whereas said company continues to assert ownership over the said property. Appellant asserts to the contrary.

7. Undisputed position between the parties is that M/s. Indian Sulphacid Industries Ltd. had inducted M/s. Sun Aluminium Corporation as a tenant in the said property and had sought ejectment of the tenant. M/s. Indian Sulphacid Industries Ltd. obtained a decree for ejectment against the tenant on 28.7.2005. The tenant M/s. Sun Aluminium Corporation litigated

right up to the Hon'ble Supreme Court. On 8.1.2007 the Petition For Special Leave To Appeal (Civil) No.12051/2006 filed by M/s. Sun Aluminium Corporation versus Indian Sulphacid Industries was disposed of with the following order :-

> "Heard.
>
> The special leave petition is dismissed. However, at this stage, counsel for the petitioner prays that some time be granted to the petitioner to vacate the premises. The learned counsel appearing for the caveator/respondent has no objection to some reasonable time being granted to the petitioner. Accordingly, we grant six months to the petitioner to vacate the premises in question subject to its filing the usual undertaking to this effect in this Court within four weeks from today. The petitioner shall hand over the vacant and peaceful possession of the premises in question to the respondent on or before the expiry of six months."

8. Relevant would it be to note that M/s. Sun Aluminium Corporation admitted before the Hon'ble Supreme Court that it was in possession of the tenanted premises and undertook to vacate the same within 6 months from the date of the order i.e. 8.1.2007.

9. Proceedings between the appellant and the respondent commenced when on 14.12.2006 respondent filed objections under Order 21 Rule 97 read with Order 101 CPC stating that the decree against M/s. Sun Aluminium Corp. could not be executed to evict the appellant from the property. It would be interesting to note that the objections to the decree

were filed on 14.12.2006 and the tenant M/s. Sun Aluminium Corporation gave the undertaking before the Hon'ble Supreme Court on 8.1.2007.

10. It was stated in the objections that the appellant had purchased the property in question vide registered sale deed dated 6.4.2005 executed by one Rajinder Kumar Gupta for a valuable consideration of Rs.7.4 lacs. It was stated that Rajinder Kumar Gupta was in actual physical possession of the property having acquired ownership rights thereto under documents dated 17.2.1999 executed in his favour by one Mr. Soni acting on behalf of M/s. Indian Sulphacid Industries Ltd.

11. Being relevant, a fact may be stated here. Prior to filing objections, appellant had filed a civil suit predicating a title to the same very property. In proceedings relatable thereto matter reached this Court in CM(M) No.1575/2006. On 4.10.2006 the CM(M) was disposed of by and under the following order :-

> "4.10.2006
>
> Present: Mr.Anil Gupta, Advocate for the Petitioner
> Mr.Pawan Kumar Aggarwal,Advocate for the Respondent No.1.
>
> Caveat No.94/2006
>
> Since learned counsel for respondent No.1 has entered appearance, caveat stands

discharged.

CM No.13563/2006

Allowed subject to just exceptions.

CM(M) No.1575/2006 & CM No.13562/2006

After some hearing, it is agreed that respondent no.1 would be free to take possession of the disputed property from tenant, but will not transfer, part with possession or create any third party interest in the suit property without leave and liberty of the trial court.

Needless to say that the trial court will endeavour to expedite the trial especially as the contention of the learned counsel for respondent no.1 is that the said respondent has already had one round of litigation with the tenant right up to this court.

In view of the aforesaid, petition and the application stand disposed of."

12. Reverting back to the objections filed, considering the documents filed by the appellant and the pleadings of the appellant, noting inherent contradictions thereunder, learned Executing Court dismissed the objections filed by the appellant vide order dated 2.6.2006. The first appeal has been dismissed by the Appellate Court vide order dated 25.8.2007.

13. Learned counsel for the appellant urges that Mr.V.K.Soni, Manager of the respondent had executed an agreement to sell, irrevocable power of attorney, a general and a special power of attorney in favour of Rajinder Kumar Gupta and had received, on behalf of the respondent, valuable

consideration and thus, the respondent lost all right, title and interest in the property. It is urged that Shri Rajinder Kr. Gupta in turn executed a regular sale deed in favour of the appellant on 6.4.2005 after receiving the sale consideration in sum of Rs.7.4 lacs thereby conveying title to the appellant. With reference to the decision reported as AIR 1969 SC 73 *Seth Loon Karan Sethiya Vs. Ivan E. John*, 117 (2005) DLT 506 *J.C.Mehra Vs. Kusum Gupta* it is urged that when a person conveys an irrevocable power for valuable consideration the same cannot be revoked. Thus, it is urged that the respondent cannot claim having revoked the power of attorney executed by the respondent in favour of Rajinder Gupta.

14. Relying upon the decision reported as 2006 (87) DRJ 567 *Vinod Singh Vs. Phutori Devi* it is urged that an agreement to sell affords good title to a person to seek specific performance of the property agreed to be sold.

15. With reference to the decision reported as AIR 1998 SC 1754 *Silverline Forum Pvt. Ltd. V. Rajiv Trust* AIR 2002 SC 251 *N.S.S. Narayan Sarma Vs. M/s. Gold Stone Exports Pvt. Ltd.* it is urged that since appellant was claiming an independent title and not under the judgment debtor, learned Executing Court was obliged to decide on the issue of title.

16. Save and except the last 2 decisions pronounced by

Hon'ble Supreme Court, I need not trouble myself much on the ration of law which can be culled out from the other decisions for the reason before legal principles laid down therein can be attracted, appellant would have to show a bona fide foundation for the claim made by the appellant.

17. Pertaining to the powers of an Executing Court and scope of an objection resisting execution of a decree, relating to immovable property, observations in para 12-13 of the Supreme Court in *Silverline's* case may be noted. They read as under :-

> "12-13. It is clear that executing Court can decide whether the resistor or obstructor is a person bound by the decree and he refuses to vacate the property. That question also squarely falls within the adjudicatory process contemplated in Order 21, Rule 97(2) of the Code. The adjudication mentioned therein need not necessarily involve a detailed enquiry or collection of evidence. Court can make the adjudication on admitted facts or even on the averments made by the resistor. Of course the Court can direct the parties to adduce evidence for such determination if the Court deems it necessary."

18. It is true that under the Code of Civil Procedure objections to execution of a decree relating to immovable property have to be decided by the Executing Court and no separate suit lies but as observed by the Hon'ble Supreme Court in *Silverline's* case (supra) the court need not necessarily hold detailed enquiry, for if on the admitted facts the matter

can be disposed of or if there are inherent contradictions in the claim of the objector, objections can be disposed of noting the same.

19. In this connection I may note, as has often been said, the real problem of a plaintiff commences when he obtains a decree. As would be noted hereinafter, inherent contradictory pleadings are being resorted to by the appellant.

20. In the objection petition filed, in para 5, pertaining to possession, appellant has pleaded as under :-

> "5. That Sh. Rajender Kumar Gupta S/o Sh. Om Prakash Gupta had come into actual physical possession of the property in question bearing No.458-466, Indian Sulphacid Industries Compound, Gali No.8, Friends Colony, Shahdara, Delhi-110032 on 17.02.1999 and the ownership and proprietary rights remained with him till 06.04.2005 when he executed the registered sale deed on behalf of the company respondent No.1 dated 06.04.2005 for a consideration of Rs.7,40,000/- (Rupees seven lacs forty thousand only). Thus the petitioner-claimant became the absolute and exclusive owner of the property in question and the respondent no.2 M/s. Sun Aluminium Corporation situated at 458-466, Indian Sulphacid Industries Compound, Gali No.8, Friends Colony, G.T.Road, Shahdara, Delhi had vacated the property in question on 30.08.2006 and handed over the vacant peaceful possession to the petitioner-claimant. The petitioner has been in actual physical possession of the property in question since then."

21. It would be interesting to note that in the first part of the paragraph, appellant has categorically stated that Rajinder

Kumar Gupta came into actual physical possession of the property. Though date when Rajinder Kumar Gupta came into actual physical possession of the property has not been stated, but it has to be before 6.4.2005 for the reason appellant has stated that on 6.4.2005 he purchased the property from Rajinder Kumar Gupta.

22. But, in the latter half of para 5 of the objections it has been pleaded by the appellant that M/s. Sun Aluminium Corporation handed over possession of the property to the appellant on 30.8.2006.

23. Proceedings before the Hon'ble Supreme Court to which reference has been made by me above thus assume significance. Till as late as 8.1.2007, M/s. Sun Aluminium Corporation litigated with the respondent asserting that the decree obtained by the respondent against it was bad in law. M/s. Sun Aluminium Corporation sought to protect its possession as a tenant even before the Hon'ble Supreme Court till as late as 8.1.2007.

24. It would not be out of place to mention that no document has been filed pertaining to attornment by M/s. Sun Aluminium Corporation in favour of either Rajinder Kumar Gupta or the appellant.

25. It is also interesting to note that the documents

dated 17.2.1999 referred to sale consideration being received in cash. Even the sale deed relied upon by the appellant in his favour refers to receiving of sale consideration in cash.

26. The respondent has fought a bitter battle with the tenant. The battle with the tenant commenced in the year 2004. If Rajinder Kumar Gupta had indeed acquired title to the property under the agreement to sell and power of attorney on 17.2.1999, not a word has been explained as to what Rajinder Kumar Gupta was doing in respect of the rent from the tenant.

27. Not only that, the appellant gave an undertaking in CM(M) No.1575/2006 on 4.10.2006 to the effect that let the respondent take possession of the disputed property from the tenant.

28. I eschew the circumstances under which the concession was made. But, what is relevant is that the appellant admitted even before this Court on 4.10.2006 that M/s. Sun Aluminium Corporation was a tenant in occupation of the property in question.

29. Surprisingly, as noted hereinabove, in para 5 of the objections, after stating that Rajinder Kumar Gupta came into actual physical possession of the property it was later on stated that the tenant vacated the tenanted premises on 30.8.2006. The said statement runs in the teeth of the statement made by

the appellant before this court on 4.10.2006 that the respondent would be free to take possession of the disputed property from the tenant, meaning thereby, appellant admitted that M/s. Sun Aluminium Corporation was in possession of the premises. I may also note that later on the tenant retracted from its undertaking before the Hon'ble Supreme Court stating that it had surrendered possession to the appellant.

30. It is obviously a case where the appellant and the tenant are colluding to successfully raise obstacles in a concerted manner against the respondent to frustrate the execution of the decree.

31. Facts on record prima facie establish a mala fide attempt to continue with a futile litigation.

32. I hold that on the aforenoted facts, view taken by both courts below is legal and valid. No question of law arises for consideration.

33. The appeal is accordingly dismissed.

34. Costs shall follow.

December 13, 2007 PRADEEP NANDRAJOG
vg JUDGE